

46.802 Definition.

High-value item, as used in this subpart, means a contract end item that (a) has a high unit cost (normally exceeding \$100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and (b) is designated by the contracting officer as a high-value item.

46.803 Policy.

(a) *General.* The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that (1) occurs after acceptance of supplies delivered or services performed under a contract and (2) results from defects or deficiencies in the supplies or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.

(b) *High-value items.* In contracts requiring delivery of high-value items, the Government will relieve contractors of contractual liability for loss of or damage to those items. However, this relief shall not limit the Government's rights arising under the contract to—

(1) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a high-value item occurs; or

(2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

(c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) above when contractor liability can be preserved without increasing the contract price.

(d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under paragraphs (a) and (b) above does not apply—

(1) To the extent that contractor liability is expressly provided under a contract clause authorized by this regulation;

(2) When a defect or deficiency in, or the Government's acceptance of, the supplies or services results from willful

misconduct or lack of good faith on the part of the contractor's managerial personnel; or

(3) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Government through purchase or use of the supplies delivered or services performed under the contract.

46.804 Items priced at or based on catalog or market prices.

Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices, contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.

[48 FR 42415, Sept. 19, 1983, as amended at 60 FR 48218, Sept. 18, 1995; 62 FR 259, Jan. 2, 1997]

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold.* The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the simplified acquisition threshold and the contract is subject to the requirements of this subpart as indicated in 46.801:

(1) In contracts requiring delivery of end items that are not high-value items, insert the clause at 52.246-23, Limitation of Liability.

(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High-Value Items.

(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.